



File Code: 1570

Date: June 16, 2011

Michael Garrity
Alliance for the Wild Rockies
PO Box 505
Helena, MT 59601

Dear Mr. Garrity:

This is my decision on disposition of the appeal you filed, on behalf of the Alliance for the Wild Rockies regarding the Beaver Creek Landscape Management Project Record of Decision (ROD) on the Custer National Forest.

My review of your appeal was conducted pursuant to, and in accordance with, 36 CFR 215.18 to ensure the analysis and decision are in compliance with applicable laws, regulations, policy, and orders. I have reviewed the appeal record, including your arguments, the information referenced in the District Ranger's May 16, 2011 transmittal letter, and the Appeal Reviewing Officer's analysis and recommendation (copy enclosed). The transmittal letter provides the specific page references to discussions in the ROD and project file, which bear upon your objections. I specifically incorporate in this decision the appeal record, the references and citations contained in the transmittal letter, and the Appeal Reviewing Officer's analysis and recommendation.

The Appeal Reviewing Officer has considered your arguments, the appeal record, and the transmittal letter and recommends the District Ranger's decision be affirmed and your requested relief be denied.

Based upon a review of the references and citations provided by the District Ranger, I find the objections were adequately considered in the ROD. I agree with the Appeal Reviewing Officer's analysis and conclusions in regard to your appeal objections. I find the District Ranger has made a reasoned decision and has complied with all laws, regulations, and policy.

After careful consideration of the above factors, I affirm the District Ranger's decision to implement the Beaver Creek Landscape Management project. Your requested relief is denied.

My decision constitutes the final administrative determination of the Department of Agriculture [36 CFR 215.18(c)].

Sincerely,

/s/ Timothy W. Bond
TIMOTHY W. BOND
Appeal Deciding Officer





File Code: 1570
Route To: (1570)

Date: June 15, 2011

Subject: 1570 (215) A&L - ARO Letter - Beaver Creek Landscape Management Project
ROD - Custer NF - Alliance for the Wild Rockies - #11-01-00-0020

To: Forest Supervisor Custer National Forest, Appeal Deciding Officer

This is my recommendation on disposition of the appeal filed by Michael Garrity, on behalf of Alliance for the Wild Rockies, concerning the Beaver Creek Landscape Management Project Record of Decision signed by the Ashland District Ranger Walt Allen on the Custer National Forest.

The District Ranger's decision adopts Alternative B as analyzed in the Final Environmental Impact Statement. The Selected Alternative includes treatment to reduce fuels and restore structural diversity on 10,508 acres of a 14,053 acre landscape. About 2500 acres will be thinned or cut commercially; of that, about 960 acres will also have prescribed fire applied. Approximately 4430 acres will be treated non-commercially by mastication or hand thinning, and 3500 of those acres will also have prescribed fire applied post-thinning. An additional 3600 acres would be treated only with prescribed fire. Access to treatment units will require 15.2 miles of temporary roads be constructed; these will be obliterated at the end of implementation. To maintain big game security, seasonal restrictions will be applied to two roads during hunting season in the project area. This modifies the 2009 Ashland Travel Management decision. Obliteration of seven short segments of road totaling 2.1 miles will also occur to reduce road densities and reduce the risk of cumulative watershed effects.

My review was conducted pursuant to, and in accordance with, 36 CFR 215.19 to ensure the analysis and decision is in compliance with applicable laws, regulations, policy, and orders. The appeal record, including the appellant's objections and recommended changes, has been thoroughly reviewed. Although I may not have listed each specific issue, I have considered all the issues raised in the appeal and believe they are adequately addressed below.

The appellant alleges violations of the National Environmental Policy Act (NEPA), the National Forest Management Act (NFMA), the Endangered Species Act (ESA), and the Administrative Procedures Act (APA). The appellant requests a reversal of the ROD. An informal meeting was held but no resolution of the issues was reached.

ISSUE REVIEW

Issue 1. *The ROD and FEIS's soil section fails to disclose adequately how soil productivity will be affected by this proposed timber sale. Soil Quality Monitoring is inadequate and estimates of soil disturbance are not scientifically valid.*

Response: The appellant claims the soil analysis and soil quality monitoring are inadequate.

The National Forest Management Act (NFMA) requires the agency to insure that timber will be harvested from National Forest System lands only where soil, slope, or other watershed conditions will not be irreversibly damaged (16 USC 1604(g)(3)(E)(i)).



In support of this requirement, FS Northern Region policy is to, “Design new activities that do not create detrimental soil conditions on more than 15 percent of an activity area. In areas where less than 15 percent detrimental soil conditions exist from prior activities, the cumulative detrimental effect of the current activity following project implementation and restoration must not exceed 15 percent. In areas where more than 15 percent detrimental soil conditions exist from prior activities, the cumulative detrimental effects from project implementation and restoration should not exceed the conditions prior to the planned activity and should move toward a net improvement in soil quality” (FSM 2500-99-1).

Furthermore, the Custer National Forest LRMP (Forest Plan, FP) requires that, “Soil and water resources will be managed to maintain or improve quality of watershed, including soil productivity and water quality. Best Management Practices will be applied to project activities to assist in meeting or exceeding state water quality standards (see FSH 2509.22)” (FP p II-25). FSH 2509.22 was superseded by FSM 2500 in 2010.

For the BCLMP, the soil scientist designed and implemented systematic surveys of potentially affected lands. All proposed treatment areas were visited. Intensity of surveys varied commensurate with indications of, or potential for, past or ongoing soils effects and potential for project related effects (soil type, treatment type, etc) (FEIS 3-101 to 3-108, FEIS Appendix D, FEIS Appendix F). Survey results indicate, and recent Forest-wide monitoring supports, that existing detrimental soil disturbance is low; 0 to 3 percent in most areas with a few less than 6 percent (FEIS 3-108, FEIS Appendix D).

Individual and cumulative effects of the proposed treatments are analyzed and disclosed in the FEIS commensurate with the risks involved. Appropriate project design and mitigation features are applied and their efficacy supported and accounted for in the analysis (FEIS 3-109 to 3-124, FEIS Appendix D). Conclusions are reasoned and supported by the evidence. The proposed actions are consistent with the Forest Plan requirement to maintain soil quality, including productivity (FEIS 3-124). Treatments meet and are consistent with Region 1 soil quality guidelines (FEIS 3-123, FEIS Appendix D). Short-term impacts are identified, but they are not expected to lead to decreases in long-term productivity (FEIS 1-124). The Forest took the requisite hard look required under NEPA.

Issue 2. The agency is violating the Custer Forest Plan and failed to evaluate project impacts for goshawks. The Custer NF has not done adequate monitoring for goshawks.

Response: The appellant alleges project impacts for goshawks were not evaluated, and the Custer NF has not done adequate monitoring.

The Custer National Forest Plan requires that habitat be maintained and improved for goshawk, which is a Management Indicator Species for old growth forest (USDA 1986, p. 17-18). The Forest Plan does not provide any specific standards, goals, guidelines, or recommendations that direct how old growth habitat should be maintained or improved for goshawk. Acceptable tools for managing habitat may include “rejuvenation of plant species, protection of fragile habitats, and timber harvesting to meet wildlife habitat needs” (*ibid*, p.18). Regional Direction (Tidwell 2007) and the accompanying Northern Goshawk, Northern Region Overview (Brewer et al. 2009) provide a process to analyze project level effects to goshawk, summarize the best available science for goshawk, and leaves options open for professional judgment at the local level (Tidwell 2007).

Following Regional recommendations for monitoring (FEIS 3-307 and 3-311), active nest sites and habitat within the project area were identified (FEIS 3-306 – 3-308). The Forest determined while there is no old forest and the species are underrepresented in mature forests, goshawks are primarily using mid-aged forests (FEIS 3-309). The Forest acknowledges goshawk habitat has been affected by past wildland

fire and management (FEIS 3-305). Issues raised by the appellant regarding monitoring are addressed in Response to Comments in Chapter 4 of the FEIS on pages 4-52 to 4-55.

Alternatives B and C respond to concerns about goshawk habitat. Alt. B includes design features that maintain suitable habitat for goshawk and their prey species. Alternative C eliminates treatment of 1200-1300 acres for wildlife resource concerns by removing units in Goshawk Post-Fledging Areas (PFAs), significantly reducing miles of temporary roads and leaving larger untreated blocks of cover for goshawk habitat.

With respect to the appellant's challenge, I find that the Forest, in compliance with the Forest Plan and Regional direction, monitored and identified existing populations, current and potential habitat for Northern goshawk.

Issue 3. The Beaver Creek Landscape Management Project is in violation of the Custer Forest Plan, and therefore in violation of National Forest Management Act. The vegetative management practices chosen by the Custer National Forest for the Beaver Creek Project have not been properly defined, or analyzed, in the Forest Plan.

Response: The Appellants allege that the BCLMP replaced programmatic management direction and that the vegetation management practices are not consistent with the current Forest Plan requiring a significant Forest Plan Amendment. They also allege that management emphasis for Wildland Urban Interface is not consistent with current management direction.

The BCLMP consists primarily of Custer Forest Plan Management areas B, D and G. Each of these management areas contain lands suitable for timber management and prescribed fire. Management areas F, P and N permit harvest for specific objectives. The proposed treatments fall within those identified and analyzed in the Forest Plan and therefore do not require an amendment to the Forest Plan. These treatments are described in Appendix B of the FEIS and are standard vegetation management practices.

The designation of Wildland Urban Interface does not change Management Area direction in the Forest Plan and so does not require an amendment to the plan. See BCLMP – FEIS pages 2-26 through 2-35, and Chapter 4, Response to Comments pages 4-10 and 4-11).

Issue 4. The EIS does not adequately examine what threatened, endangered, rare and sensitive plant species and habitat are located within the proposed project area in violation of the ESA, NEPA, the APA and NFMA. The standards used to protect threatened, rare, sensitive and culturally important plant species and their habitats from the management actions proposed in this project are inadequate.

Response: The appellant contends that the EIS does not adequately examine what threatened, endangered, rare and sensitive plant species and habitat are located within the project area and tiering to plant surveys is inappropriate when the data is stale (nearly 15 yrs old). They also contend the standards used to protect threatened, rare, sensitive and culturally important plant species and their habitats from management actions in this project are inadequate.

The Forest Plan provides general mgmt direction (page 3) that indicates; “the goal for the mgmt of Threatened and Endangered plant and animal species is to provide habitat that contributes to the recovery of the species”. Page 17 of the Plan indicates that no federally listed threatened and endangered plant species occur on the National Forest units of the CNF at the time the Plan was prepared in 1986. Since, that time there continues to be no plants designated as Threatened and Endangered that occur within the CNF. Within the framework of the Custer Forest Plan, direction is given to manage for retention of

habitat of unique plant species which include sensitive species (Forest Plan, p. 20 and Appendix VII). Specific management area standards and goals for management areas are silent on the topic of *sensitive* plant species.

The 1976 National Forest Management Act (NFMA) directs that federal lands “provide for the diversity of plant and animal communities based on suitability and capability of the specific land area in order to meet overall multiple-use objectives: NFMA addresses the requirement for diversity and does not require minimum viable populations assessments.

As a result of this and other laws, such as the Endangered Species Act, the Forest Service has been evaluating rare plant species via the sensitive species list formulated on a Region by Region basis. The current USFS Northern Region (R-1) sensitive plant species list was developed by the Regional Forester October 28, 2004 and modified in 2008.

Listed sensitive species with potential habitat on the Ashland District were evaluated for inclusion in the biological findings of this assessment (USDA 2010). The species are heavy sedge (*Carex gravida* var. *gravida*) and Barr’s milkvetch (*Astragalus barrii*). Nuttall desert-parsley (*Lomatium nuttallii*), a species of cultural interest, was also evaluated (page 2-5 of the FEIS) and a Biological Evaluation (Project Record K-019) was completed.

Heavy sedge occurs within the project area but located in an area where no treatments are proposed under the action alternatives. The population is adjacent to (within 1/8 mile) some proposed activity areas for commercial treatment without fire under Alt A and B, in Alt C the treatment areas and temp route is ¼ mile from the population (FEIS page 3-182).

Both Barr’s milkvetch and Nuttall desert-parsley are a regional endemic; known populations exist several miles to the south of the BCLMP area on steep badland slopes. There are no known populations of Barr’s milkvetch and Nuttall desert-parsley in the BCLMP area. Suitable habitats for these species within the BCLMP are considered to be a minor component of the landscape (FEIS page 3-190).

Plant surveys by botanists, Bonnie Heidel and Hollis Marriott, were documented in 1996. Their surveys emphasized reconnaissance of habitats where 12 rare plants might occur. Heavy sedge and Barr’s milkvetch were specifically sought in many of the survey areas. The one heavy sedge population known within the BCLMP area was detected and mapped during this survey. Other areas were surveyed in the Beaver Creek BCLMP area but no new rare populations were detected (Heidel and Marriott 1996).

Field reconnaissance of the known population of heavy sedge was conducted by Megan Dawson in 2010 (Project Record K-004). Other field surveys have been conducted within or adjacent to the BCLMP area by field crews, including CNF Ecologists DiBenedetto, Spencer and Reid, periodically over the last several years. These surveys were often associated with various plant information collected with ground truth plots for satellite imagery and Forest Inventory Assessment. No new populations of sensitive plants were noted during these field inspections.

The project area was not surveyed for Nuttall desert-parsley due to the low likelihood that project actions would occur in the associated habitat settings (steep and sparse vegetation) or would have little or no effect from project actions. However, an analysis is included in the biological evaluation (Project Record K-019) to address potential effects to the associated habitat in case there are any unknown populations located within the project area.

Where populations were present in the analysis area, or where suitable habitat for populations might exist in the analysis area and survey work had not been performed, further evaluation was conducted by

determining potential vulnerability to effects from the various alternatives (i.e. fire, mastication, thinning, mechanized (wheeled/tracked) tree harvest, temporary road building, and road obliteration). Based on potential vulnerability to effects, the effects analysis was commensurate and addresses cause and effect, spatial and temporal limits of the analysis, and effects prediction (page 3-180, FEIS).

With regard to the first part of the appellant's challenge, plant surveys, field reconnaissance, and other field surveys were conducted within or adjacent to the BCLMP and no new populations of sensitive plants were noted during these field inspections. The appellant also challenged the standards used to protect plant species and their habitats from the management actions proposed are inadequate. There are no treatments or prescribed burning in or adjacent to known populations under the action alternatives, so we must conclude that the species and their habitat are adequately protected.

Issue 5. The FEIS does not address the cumulative, direct and indirect effects of the proposed project on weed introduction, spread and persistence that includes how weed infestations have been and will be influenced by the following management actions:

Response: NOTE: This was a challenging issue to address as the appellant consistently refers to and quotes from an analysis and ROD that is *not* the BCLMP. However the appellant is clearly concerned about the threat of noxious weeds posed by logging, prescribed burns and road construction.

According to the Custer Forest Plan, the goal of noxious weed management is to implement an integrated pest management program aimed at controlling new starts, priority areas and areas of minor infestations. Holding actions will be implemented on areas of existing large infestations. Preferred control methods will be biological when such methods are available and feasible. Until that time, approved herbicides and mechanical methods will be used. In some cases biological and chemical control methods may be necessary to adequately control noxious weeds.

The FEIS discloses that a possibility for Action Alternatives to increase spread of weeds and/or create other infestations does exist (FEIS 2-54). The CNF completed a forest wide weed treatment analysis in 2006 (USDA 2006a). This analysis and accompanying ROD allow for implementation of an integrated weed management strategy on all CNF lands, including the Ashland RD. The FEIS identified existing project-area noxious weed populations (see Project Record) and included appropriate site-specific measures to comply with agency noxious weed BMPs (Best Management Practices) (USDA 2001) and to mitigate for potential weed proliferation concerns in the BCLMP area. An alternative to specifically address noxious weeds issues was therefore determined by the Responsible Official to be unnecessary, as it would be duplicative of the measures already included in the Proposed Action and other efforts, including the 2006 CNF Final EIS for Weed Management (FEIS 2-43).

With regard to the appellant's challenge, I find the Forest Service, in compliance with the Custer Forest Plan and NEPA, appropriately considered the threat of noxious weeds and selected an alternative that will mitigate possible impacts.

Issue 6. The agency failed to disclose that Forest Plan direction for wildlife in Management Area (MA) D is being violated.

Response: The appellant alleges the project violates the Forest Plan for Management Area D.

The Custer Forest Plan at page 53 describes the goal for MA D: "To maintain or improve the long-term diversity and quality of habitat for the selected species identified by Ranger District as well as accommodating other resource management activities such as timber harvest, livestock grazing, and oil and gas development. Some short-term habitat impacts may be necessary to achieve long-term wildlife

goals. This goal will be achieved through direct wildlife habitat improvement, as well as selecting, scheduling and implementation of cultural practices associated with other multi-resource management activities. Efforts will be made to avoid or mitigate resource conflicts”. This is restated in the FEIS on pages 2-31, where it also includes the standard to emphasize maintaining or improving wildlife habitat. The Forest Plan states wildlife analysis for stand treatment and harvest is to include identification of wildlife objectives.

FEIS page 2-32 describes how the treatments are consistent with MA D, which includes “Long-term diversity and quality of habitat would have a higher probability to be maintained.” It also describes how commercial thinning treatments within goshawk PFAs retain greater than 50 percent canopy cover, and that they maintain hiding cover for big game. The project is designed to continue to provide habitat for wildlife, and wildlife objectives were considered in silvicultural prescriptions for stand treatment (see Forest Vegetation Specialist Report, Project Record F-047). Page 3-337 of the FEIS describes consistency with the Forest Plan, and page 2-23 includes design and mitigation features to meet the needs of big game. The big game analysis on pages 3-322 to 3-338 emphasizes security area. The Record of Decision at page 16 explains the need to balance “the objectives of maintaining habitats and security cover alongside the very real threat of a large stand-replacing wildfire which could remove these same forest habitats from the landscape for a significant duration of time.”

I find that wildlife objectives were defined and the project and Decision are in compliance with standards for Management Area D.

Issue 6a. The decision is also in violation of the Forest Plan, and therefore NFMA , direction for Management Area D which the Forest Plan direction is be managed for the benefit of big game. The project is using the MT Fish Wildlife and Parks definition of big game hiding cover which is 40% hiding cover rather than the Forest Service definition of being able to hide 90% of big game at 200 feet.

Response: The appellant alleges the project is not consistent with direction for Management Area D.

The Custer Forest Plan at page 53 describes the goal for MA D: “To maintain or improve the long-term diversity and quality of habitat for the selected species identified by Ranger District as well as accommodating other resource management activities such as timber harvest, livestock grazing, and oil and gas development. Some short-term habitat impacts may be necessary to achieve long-term wildlife goals. This goal will be achieved through direct wildlife habitat improvement, as well as selecting, scheduling and implementation of cultural practices associated with other multi-resource management activities. Efforts will be made to avoid or mitigate resource conflicts”. This is restated in the FEIS on pages 2-31, where it also includes the standard to emphasize maintaining or improving wildlife habitat.

Forest-wide management standards include coordinating with State Fish and Game agencies to develop management strategies that will maintain wildlife populations with habitat capacities and management area objectives, and to manage key wildlife species and key habitat in cooperation with state and Federal agencies. As noted in the FEIS on page 3-324, the Forest Plan does not include hiding cover as a standard or guideline, and only directs that habitat for MIS species should be maintained and improved. The Forest Plan is not prescriptive in how to address hiding cover or how and where to implement it. Rather it provides flexibility to incorporate the best available science. Note that the Forest Plan definition of hiding cover (300 feet) is more liberal than the widely accepted and more conservative value used for elk (200 feet based on Lyon and Christensen, 1992). Therefore, big game security cover, as measured by canopy cover > 40 percent dispersed across the project area, was analyzed in accordance with a recommendation from FWP. Further, canopy cover provides a reasonably measureable characteristic to assess habitat quality and quantity.

The FEIS at page 3-323 describes security cover as an indicator to be used in the analysis. Page 3-324 includes the justification for using FWP's indicator of pine canopy cover that is ≥ 5 ft tall and $\geq 40\%$ canopy cover. The effects to big game cover are discussed in the FEIS on page 3-333 to 3-338. The rationale for decision regarding big game cover and security are described in the Record of Decision. The appeal transmittal letter (PR Doc V-005, page 46) clarifies that 3,698 acres of forested vegetation currently exist in the BCLMP area with canopy cover greater than 40 percent. Commercial treatments on 547 acres of that would result in canopy cover less than 40 percent. The CT-1 and noncommercial treatments were excluded because any existing canopy cover greater than 40 percent would not be reduced to less than 40 percent post treatment. Much of the commercial treatments occur in areas where canopy cover is currently less than 40 percent.

I find that the project and Decision are in compliance with direction for Management Area D.

Issue 6b. The FEIS and ROD do not accurately account for hiding cover percentages for entire key habitat elements. By making this critical information unclear, the public cannot determine whether the Forest Service is complying with the Forest Plan, or taking the required "hard look" at the environmental effects of the Project on elk and big game habitat required by NEPA, NFMA, the Forest Plan and the APA. The Forest Service must determine and clearly disclose these numbers to the public. Specifically, the Forest Service must at least disclose the pre-logging and post-logging percentage hiding cover associated with foraging areas and thermal cover.

Response: The appellant alleges hiding cover is not accurately portrayed.

The Custer Forest Plan states that implementation guidelines for projects will address quality and quantity of vegetation, i.e. residual nesting cover or thermal cover, necessary to meet the identified habitat and population goals. Analysis of wildlife values and impacts will include forage cover ratios pre and post sale (page 54). The Forest Plan does not list "key habitat elements." It does define "key areas" as winter ranges, lambing/fawning/calving areas, dancing/strutting grounds, nesting areas, breeding grounds, elk wallows, riparian and woody draws, and roosting areas.

Big game habitat is recognized as an issue in Chapter 1 of the FEIS, and security area in relation to roads open to motorized use is an issue indicator (pages 1-9 and 1-10). Big game security is a design feature and mitigation on page 2-23, for both items 12 (woody draws) and 15. The analysis for big game includes rationale for using security areas based on road density (pages 3-324 and 3-325), a discussion of existing road density and best science (pages 3-326 to 3-332), and the effects of the project on road density and security (pages 3-334 to 3-336). Security areas are defined as any area greater than or equal to one half mile from an open motorized route. These areas are mapped and displayed in the FEIS, for both the project area and for the Ashland Ranger District. Table 3.14.10 displays security area by alternative. The Record of Decision includes rationale for decision in regard to big game cover and security (page 14). Pages 18 and 19 of the ROD describe how security concerns drove development of new alternatives. Cumulative impacts to big game are displayed on 3-335 of the FEIS, and suitable habitat is provided on the Ashland District, as evidenced by stable or increasing numbers of big game in the cumulative effects analysis area (page 3-338).

I find the FEIS and ROD thoroughly define the methodology, assumptions and findings for big game hiding cover.

Issue 6c. The Forest Service Failed to Adequately Identify, Map, or Disclose the Impacts to Big Game Migration Routes Within and Throughout the Project Area.

Response: The appellant states the Forest Service failed to identify, map or disclose the impacts to big game migration routes. This topic was not raised earlier by the appellant.

The FEIS at page 3-325 states that the project area is used year long by deer and elk Appendix VII of the Custer Forest Plan (page 181) states, in regard to deer, “the animals do not migrate to a lower elevation at the onset of winter.” This leads one to the conclusion that there are not any specific migration routes with which to be concerned.

Issue 6d. The Forest Plan fails to provide any detailed guidance for maintaining viable populations of the listed Sensitive species. The combination of project impacts and inadequate FEIS analyses means that the FOREST SERVICE cannot assure that viable populations of Sensitive species are being maintained, as NFMA requires.

Response: The appellants assert that the sensitive species analysis is inadequate and the Forest Service cannot assure that viable populations are being maintained.

Sensitive species are recognized in the Custer Forest Plan as having special habitat needs that may be influenced by planned management programs (page 179). The FEIS includes a species by species analysis for sensitive species and their habitats in the project area and on the Ashland District. Presence or absence is disclosed on pages 3-285 to 3-287. Crucial habitat elements for each species are discussed and habitat conditions in the project area are described, beginning on page 3-341 and continues to page 3-357. A biological evaluation determination is included for the sensitive birds, bats, prairie dogs, reptiles and amphibians, based on the effect of project implementation, and is summarized in Chapter 2.

I determine an adequate analysis for sensitive species was conducted for this project.

Issue 6e. The EIS thus fails to come close to a genuine viability analysis for Sensitive and old-growth indicator species, such as the pine martin, wolverine, or northern goshawk. The significance of the cumulative effects of habitat fragmentation and reduction due to logging, road building, fire suppression, and other management activities in regards to their effects on population levels or viability was not disclosed.

Response: Marten and wolverine are neither sensitive nor old growth indicator species on the Custer National Forest, and their preferred habitat is not dry pine. Goshawk is addressed in Issue 2.

Issue 7. The ROD fails to demonstrate the Beaver Creek project’s “consistency” with Northern Region Snag Protocol requirements for snag and cavity nesting species habitat, and inventorying and monitoring snag and cavity nesting habitat thus violating the Forest Plan and NFMA. The CNF Forest Plan has no snags requirements and thus does not meet the best available science requirement of NFMA. The Beaver Creek project fails to take a hard look at the snags as required by NEPA.

Response: The appellant alleges the project is not consistent with the Northern Region Snag Protocol.

The Forest conducted a systematic survey and assessment for available snags and snag habitat for this project (FEIS 3-340, 341; PR, Doc. T-188). The survey and assessment found an average of over 22 snags per acre, with over 9 per acre greater than 11.5 inches diameter, well above the numbers found in unmanaged stands of similar eastside forest types (Bollenbacher et al. 2008, FEIS 3-340, PR T-018).

Project design feature #11 and silvicultural prescriptions (FEIS p. 2-22, FEIS Appendix B) ensure snag maintenance and recruitment. The intent is that existing snags are to be maintained (FEIS p. 4-70 #130).

Nevertheless, the Forest recognized that safety and feasibility will result in the loss of some snags; particularly along existing roads and adjacent to private land. Therefore, the design feature includes additional criteria to ensure that, at minimum on average per acre, at least two large existing snags are retained (FEIS p. 2-22, 4-70 #130, 4-68 #123), consistent with the Forest Plan and Northern Region Snag Management Protocol.

The Forest's approach is also consistent with the Northern Region Snag Management Protocol (USDA Forest Service, 2000a, PR T-178) in that snag retention and recruitment prescriptions should be applied, where possible, at the stand scale, but success should be measured at the watershed scale.

Future snag recruitment is explicitly addressed in the proposed treatments' design (FEIS Appendix B). Suitable cavity nesting trees or snags occur as trees die or are damaged. Future snags will be no larger than the trees they come from. The proposed treatments retain sufficient live trees for future snag recruitment and the majority of treatments will result in larger available snags over time across the landscape than would be expected under the no action alternative (FEIS 3-341, 342). Additionally, the treatments increase the forest's resilience to stand replacing disturbances such as wildfire, where many snags would be created at once but would be followed by decades of little or no snag recruitment (FEIS 3-341); a situation that has already occurred across thousands of acres of the Ashland District over the last decade (FEIS 3-339). The treatments will provide for a diversity of snag and cavity nesting habitats across the landscape over time (FEIS 3-344, FEIS Appendix B Map 1).

The FEIS analyzed and describes the effects of the various proposed treatments on snag and cavity habitat and species (FEIS 3-341 to 3-444, 4-69 #128). The analysis recognizes, for example, higher snag loss from the regeneration treatments than from thinning treatments, and that activities such as prescribed burning will both eliminate some existing snags and create new snags. The analysis conclusion that at the stand level minimum required snag levels will be met and at the project level will be exceeded and future recruitment is assured is reasoned and supported by the evidence. This is not a significant issue and more detailed analysis is not warranted in this case. The Forest took the requisite hard look.

Furthermore, the Forest responded explicitly and appropriately to comments provided by the appellants prior to the decision (for example, FEIS 4-65 to 4-71). Responses included adjustments to the analysis for the FEIS and consideration of scientific literature provided by the appellants.

The decision is consistent with the Custer Forest Plan and NFMA and the Forest took the requisite hard look under NEPA.

Issue 8. Beaver Creek Landscape Management Project Violates Clean Water Act, National Forest Management Act, and Impacts Water Quality and Native Fish.

Response: The appellant alleges the project violates the Clean Water Act, NFMA, and impacts water quality and native fish.

Permits are not necessary to issue a Decision. The FEIS acknowledges the issue with the Clean Water Act and commits to working with appropriate regulatory agencies to obtain whatever permits are necessary prior to implementation (FEIS 2-127). The FEIS also notes in response to comments (FEIS 4-37) that as of publication of the FEIS, the Forest Service is operating under the current EPA determination

that silvicultural activities are exempt from NPDES permit requirements, given that the recent 9th circuit ruling involved the State of Oregon.

The State of Montana has the authority to develop TMDLs. The fact that a particular stream is listed does not preclude management activities from taking place. Montana Code Annotated (MCA 2009) 75-5-703(10)(c), states: (10) Pending completion of a TMDL on a water body listed pursuant to MCA 75-5-702: (c) new or expanded non-point source activities affecting a listed water body may commence and continue their activities provided those activities are conducted in accordance with reasonable land, soil, and water conservation practices.

Montana Streamside Management Zone (SMZ) Law (1993). Prohibits certain forestry practices, e.g., equipment operation and broadcast burning, within 50 to 100 feet of streams. It specifies other criteria, e.g., retention tree requirements and road construction limitations, for this management zone (ARM 36.11.301).

Contrary to the appellants allegation, the FEIS does provide a list of TMDLs (3-130). Perennial stream courses are rare, disconnected and of limited length within the BCLMP area (FEIS 3-143). Short, localized riparian systems do exist and support wetland habitat. There was no treatment proposed in riparian areas (FEIS page 2-36). Travel routes are analyzed, and it is disclosed that the existing transportation system in the project area has minimal influence on water quality (FEIS page 3-137). Culverts and ditch sources are considered here as well, and road reconstruction as described on page 3-143 “would improve road drainage feature and reduce the risk of sediment generation and delivery to watercourses. The actions would address the specific route issues previously identified” on page 3-137.

Page 3-284 of the FEIS states: “Water sources in the BCLMP area are limited to isolated springs, stock ponds, and occasional seasonal wetlands. USFS inventories have not identified any fisheries in or immediately adjacent to the BCLMP area.”

I find the project to be in compliance with the Clean Water Act, NFMA, and does not impact water quality or fish.

Issue 9. The Forest Service did not take a hard look at how climate change affects and is affected by this project in violation of NEPA, NFMA, the Forest Plan, and the Administrative Procedures Act.

Response: The appellant alleges that climate change and logging will lead to increased wildfire severity and that the analysis should discuss several papers from the scientific literature pertaining to climate.

The BCLMP Affected Environment chapter describes the methodology and analysis and cites pertinent references from the literature (FEIS p. 3-256 through 3-257). The Affected Environment and Environmental Consequences chapter describes the methodology and the use of Fire Regime Condition Class (FRCC) to determine appropriate management options in response to the current conditions (FEIS Chapter 3-61, 3-85 through 3-87). The analysis points to the infinitesimal effect of the project on global and national scales. It does however describe improved resiliency to climate change under the action alternatives (FEIS p.3-266 through 3-267).

Appellants concern over the Bozeman Municipal Watershed Project on the Gallatin National Forest raises a question about whether this concern is misplaced.

Issue 10. The FS refused to study in detail any alternative which would have implemented prescribed fire fuels treatments that did not include removal of commercial wood products because such an alternative would not have met the goal of removing merchantable forest projects in violation of NEPA, NFMA and the APA. The FS also refused to study in detail any alternative consider the impacts of their proposed actions on climate change in violation of NEPA, NFMA, the forest plan and the APA.

Response: The appellant alleges the Forest Service refused to study in detail an alternative to implement prescribed fire without any commercial timber harvest.

Alternatives considered but eliminated from detailed study are listed along with rationale in the BCLMP-FEIS. Alternatives considering no commercial timber removal and use of prescribed fire treatments only were considered. The proposed action states that non-commercial portions of the action alternatives “would proceed where appropriate and as allocated funding allows”. The analysis of these actions is included as part of the action alternatives (FEIS p2-42 through 2-45).

Issue 11. Best Available Science and fire, fuels, and wildlife. The analysis for this project is supposed to be based on a consideration of the best available science.

Response: The appellant alleges project analysis was not based on the best available science.

Transition provisions for the 2000 Planning Rule direct that projects implementing land management plans must be developed considering the best available science in accordance with CFR 219.35(a). The NEPA document should methods used, reference scientific sources relied on, discuss responsible opposing views, and disclose incomplete or unavailable information. See CFR, 1502.22, 1502.24.

The project record referenced all information considered: papers, reports, literature reviews, review citations peer reviews, science consistency reviews, and results of ground based observations. Opposing views are generally highlighted in response to comments in Chapter 4 of the FEIS.

The FEIS incorporates the best available science throughout the analysis of the project. It applies a range of scientific studies for fire, fuels, vegetation treatments, and wildlife topics applicable to the proposed actions. The vegetation analysis in Chapter 3 cites 18 science references, in addition to others listed in the project record. Fire and fuels in Chapter 3 cites 21 scientific references, in addition to other material included in the project record. The wildlife analysis includes over 200 scientific references (Project Record, section T). These references are not outdated or known to be flawed. It is clear how they were used and applied in the analysis, though not all are cited in the body of Chapter 3. It is not necessary or reasonable to include every body of work on a topic in order to have a full understanding of the effects of an action. Much of the literature provided by the appellant applies to moist mixed conifer forests of Oregon and Northern California, and so does not apply to the ecological conditions on the Ashland Ranger District.

Issue 12. Economics Costs are Underestimated, and should include associated planning costs and a cost-benefit analysis.

Response: The appellants contend that the economic analysis should include associated planning costs

The Economics section of the FEIS (3-160 – 3-177) provides a detailed analysis of predicted monetary costs, economic impacts on employment, environmental justice and Civil Rights.

There is no requirement that the Forest Service include either planning costs or a monetary cost-benefit analysis when assessing economic impacts. I find the responsible official complied with applicable regulation by considering the economic feasibility of the project and whether any socio-economic group would bear a disproportionate burden from environmental impacts.

Issue 13. Beaver Creek Landscape Management Project violates the Forest Plan Visual Quality Objectives. The FEIS did not list each VQO standard that applies to each unit and disclose whether each unit meets its respective VQO standard. A failure to comply with VQO Forest Plan standards violates NFMA.

Response: The appellant alleges the project does not comply with Visual Quality Objective standards in the Forest Plan.

The Scenic Resources of National Forest system lands are regulated by the National Forest Management Act (NFMA). Requirements include the consideration, treatment, and protection of intangible resources such as scenery and aesthetics.

The CNF Land and Resource Management Plan contains direction for the management of visual resources in Forest-wide goals, Standards and MA direction. Forest-wide direction dictates the assigned VQO's, as prescribed in the Forest Plan or determined through project assessments, will be met. In addition, the plan states a natural appearing landscape will remain dominant across the Forest (Management Standard 2f -1 and 2).

MA direction specifies which VQO's are to be managed for. In some cases, additional direction is identified for a specific MA. Table 3.9.1 lists the MAs relevant to this proposal, displays the assigned VQO(s), and notes any additional MA-specific direction contained in the Plan.

Section 3.9 of the FEIS (3-220 – 232) describes effects on scenery resources. Although the document does not list each VQO standard that applies to each unit, a table with this specific information is referenced (FEIS 3-223) and incorporated in the project record (Doc. N-002), as well as numerous maps. Where units may not meet VQO standards, design features and mitigation measures are provided.

Regarding the appellants challenge, I find that the Forest Service is in compliance with NFMA.

Issue 14. Questions submitted by Appellants AWR and NEC on the Draft EIS

Response: The appellant alleges that the Forest Service had failed to answer a number of questions regarding the impacts of the BCLMP.

The original CD with the FEIS mailed to the appellant on March 11, 2011 did not include Chapter 4, Response to Comments, which contained the questions from the appellant along with the answers from the interdisciplinary team and Responsible Official. Upon discovery of the error, a letter and new CD that included Chapter 4 was mailed on March 15 (Project Record C-036) to the appellant and anyone else who requested the FEIS on CD. Although there were some technical difficulties in accessing documents for the BCLMP on the forest internet site, those difficulties were acknowledged and remedied as soon as possible (see Transmittal Letter dated May 20, 2011). The appellants were unable to see the responses to their questions for about four days. The questions submitted by the appellants are responded to in the Chapter 4 of the FEIS.

Issue 15. The WUI designation effectively amends the Forest Plan in the project area without conducting the proper interdisciplinary analysis and public participation required for a significant Forest Plan amendment, in violation of NFMA, NEPA, and the APA (Administrative Procedures Act)

Response: The appellant contends the WUI designation effectively amends the Forest Plan in the project area without conducting proper interdisciplinary analysis and public participation required for a significant Forest Plan amendment, in violation of NFMA, NEPA and APA. They contend WUI vegetative management practices require “future treatments (approx 30-40 yrs from today) to maintain “desirable stand structure so control and or intensity of fire is maintained at desirable levels” (FEIS p.3-245) this combination and duration, of vegetative mgmt practice represents a significant programmatic departure for the MA goals, objectives and standards. They are also concerned that the desired future condition established in the Forest Plan is now being replaced by WUI treatments.

The Healthy Forest Restoration Act states in **RELATION TO AGENCY PLANS.**—An authorized hazardous fuel reduction project shall be conducted consistent with the resource management plan and other relevant administrative policies or decisions applicable to the Federal land covered by the project. The WUI designation in the Powder River County Community Wildfire Protection Plan does not amend the forest plan although treatments proposed in the area must be consistent with current Forest Plan.

Future treatments are mentioned in the BCLMP FEIS on page 3-71 stating:

“Re-occurring prescribed maintenance underburns would be needed in order to ensure long-term fire protection for private lands, special designated resource areas and to maintain a distribution of forest age/stand structure that is more resilient against high-severity stand-replacing wildland fires. These underburns should be considered every 10 – 15 years, and could be considered in the future subject to additional NEPA analysis. Burning prescription would be a low heat intensity fire with flame lengths not exceeding 2-3 feet and spreading over 70-80 percent of the stand area. The end-result would be a patchy mosaic of burned and unburned areas resembling the historic natural balance of this ecosystem. Some patches of newly established regeneration may survive, which coincides with the historic natural age class distribution. Some portions of the stand would be left more open. Fire spread would not occur where ground fuels are still sparse or discontinuous. If a heavy fuel accumulation occurred over an extensive area since the last prescribed fire entry, these concentrations may need to be burned prior to the underburn. Unexpected fuel loadings are common in this area due to such natural events as snow and windstorms.

Specific objectives for a maintenance underburn program are threefold: (a) lessen amount of 0-3 inch diameter surface fuels that accumulated since the last treatment (b) ensure mortality of some regeneration that established and created fuel ladder situation, and (c), stimulate sprouting of hardwoods/aspen in draws and other desired locations.”

All treatments proposed in the BCLMP are consistent with the goals, objectives and standards in the CNF Forest Plan (1986). They are not modified by the WUI designation in the Powder River CWPP. All management areas in the project (MA B, D, F G, M, N and P) have standards for the use of prescribed fire to enhance either wildlife habitat, stand maintenance, natural fuel reduction and/or range improvement. All treatment proposed in the BCLMP and any future maintenance must be consistent with the CNF plan and I find that they are.

Issue 16. New Information and references and/or Literature Cited submitted by Appellants AWR and NEC in the appeal of Beaver Creek Landscape Management Project

Response: The appellant contends the references they submitted were not considered.

Appellants, in part, base their appeal contentions on over 80 literature citations introduced for the first time here during appeal. At least 35 of these were not even included or attached to the appeal. They did not put the agency on notice of this information they now contend is relevant to their issues (project appeal transmittal letter, p. 99-102). The notice and comment period is intended to solicit information, concerns, and any issues specific to the proposed action and to provide such comments to the Responsible Official before the decision is made. The intent in requiring comments is to obtain meaningful and useful information from individuals about their concerns and issues, and use it to enhance project analysis and project planning. Waiting until the appeal period to raise an issue or concern does not give the Responsible Official an opportunity to consider the impacts of the project in light of public concerns.

Due to the fact the appellants did not bring this information and related concerns to the attention of the Responsible Official at the appropriate time, I will not consider this untimely information. I have, however, considered the broader contentions as documented above based on the information and assertions that were provided to the Responsible Official prior to the decision.

I will point out, however, that the Responsible Official did a commendable job reviewing, considering, and responding to literature that the appellants did provide in a timely manner, incorporating relevant information into the analysis for the FEIS (for example, see FEIS 4-20 to 4-71, Response to Comments 46, 83, 106, 109, 124, 125, 129, and FEIS 3-343).

RECOMMENDATION

I have reviewed the record for each of the contentions addressed above and have found that the analysis and decision adequately address the issues raised by the appellant. I recommend the *District Ranger's* decision be affirmed and the appellant's requested relief be denied.

/s/ Julie K. King
JULIE K. KING
Appeal Reviewing Officer

cc: Ray G Smith
Mark Slacks
Walt Allen